No. 83-209

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

DIVISION 732, AMALGAMATED TRANSIT UNION AND MARTIN J. BURNS,

Petitioners,

vs.

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY, ET. AL.,

Respondents.

PETITIONERS' REPLY MEMORANDUM

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TABLE OF AUTHORITIES

Cases:

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Petitioners here seek review of the Georgia Supreme Court's refusal to enforce the law Georgia passed and the commitments the Metropolitan Atlanta Rapid Transit Authority ("MARTA") made to satisfy the federal Urban Mass Transportation Act, 49 U.S.C. §1601, *et seq.* ("UMTA"), and qualify for federal funds. Rather than address this issue, MARTA tries two diversions. First, MARTA discusses an unrelated case the International Amalgamated Transit Union[1] happens to be litigating elsewhere. Next, MARTA defends the decision below on grounds the Georgia courts never addressed, inviting this court to leave standing the existing, indefensible decision.

The unrelated case, *Amalgamated Transit Union* v. *Donovan*, No. 82-2042 (D.D.C.), involves the new MARTA law of 1982, Ga. Laws 1982, pp. 5101-14, passed after all

1 The International Amalgamated Transit Union is not a party to the instant case.

events in this case had occurred.[2] In *Amalgamated Transit Union* v. *Donovan*, the International Amalgamated Transit Union is challenging the United States Secretary of Labor's decision that MARTA may qualify for future federal assistance under the UMTA after passage of the 1982 Act. By invoking the litigation in *Amalgamated Transit Union* v. *Donovan*, Respondent would obscure the issue unique to this case: whether the Georgia Court may refuse to enforce commitments made for eleven years before passage of the 1982 Act to receive millions of dollars in federal grants.[3]

MARTA's suggestion that, to reverse the decision below, this Court must "overrule [] its unanimous decision in *Jackson* and find that §13(c) in fact created a right to enforceable interest arbitration" (Resp. Br., p. 13) is, of course, nonsense.[4] Since 1971, the §13(c) Agreements at issue here provided for interest arbitration. In *Jackson Transit Authority* v. *Local Division 1285, Amalgamated Transit Union*, 457 U.S. 15 (1982), this Court held that the UMTA required state law to

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2 The 1982 Act, which amended the 1965 law at issue in this dispute, forbids MARTA to bargain collectively over a number of subjects and prohibits it from agreeing to a meaningful dispute resolution mechanism. It thus represents a complete turnaround from the 1965 statute at issue in this case, which, as written, authorized MARTA to make the arrangements the UMTA required (*see* Pet. Br., p. 8, n. 8). (Pet. Br., will refer to our Petition for Certiorari. Resp. Br. will refer to MARTA's Brief in Opposition to Petition for a Writ of Certiorari.)

The 1982 Act is not retroactive. No party to this case has ever contended that the 1982 Act applied to any aspect of this case.

3 MARTA's assertion that "[i]n both that suit and here, the Union claims it has a 'federal right' under §13(c) to compulsory interest arbitration" (Resp. Br., p. 7) is simply misleading. In this case, in order to satisfy the UMTA and obtain the federal assistance, the Georgia legislature authorized and MARTA agreed to such arbitration. Whether the UMTA requires the legislature again to allow and MARTA again to agree to such arbitration is a different question.

4 MARTA's use of the phrase "enforceable" with regard to interest arbitration language (Resp. Br., p. 13) is unclear. Surely, MARTA did not think that for eleven years its federal funding depended on, and the Union contracted repeatedly for, *unenforceable* arbitration.

"protect" the employees' "rights" and that §13(c) Agreements were to be "enforceable" (*Jackson, supra*, at 20-21, 27-28). Requiring Georgia to enforce its own law and contracts here will follow *Jackson*, not overrule it. Only allowing the Georgia Court to ignore its own conforming law and render the 13(c) Agreements "unenforceable" would violate *Jackson*.

Finally, as Respondent's Brief well illustrates, in its present posture, this case implicates no local policy, but, rather, turns on the federal question of the meaning of the federal Arbitration Act, 9 U.S.C. §1 *et seq*. As set forth in the Petition here, the federal Arbitration Act generally overrules and replaces the old common law doctrine, which the Georgia Courts applied here, that contracts to arbitrate are unenforceable.

The Georgia Supreme Court rejected the Union's contention that the federal Arbitration Act rendered this contract to arbitrate enforceable, ruling that "as we have previously stated, *Local Div. 732, supra*, and *Jackson Transit Auth., supra*, hold that state law is applicable here." (Pet. App. C10).[5] Perhaps in light of this Court's contrary ruling in *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, ___ U.S. ___, 103 S.Ct. 927 (1983), MARTA does not defend the Georgia Supreme Court's choice of its local revocation doctrine over the federal Act. Instead, MARTA defends the decision based on two other unrelated contentions, neither of which was ruled on below.[6] Since the Georgia courts simply refused to apply the Act at all, we do not know whether or not they would classify the §13(c) Agreement, sent to Washington to qualify MARTA for federal funds to operate

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5 This is the Georgia Court's sole ruling on the subject of the federal Arbitration Act. Although MARTA proffered its other contentions regarding the scope of the Act, the Georgia Court did not even address them, much less adopt them.

6 MARTA contends that the §13(c) Agreements do not "evidence a transaction involving commerce," as required by the Arbitration Act, and that the Arbitration Act does not apply to agreements to engage in interest arbitration. (Resp. Br., pp. 9, 11).

its piece of the interstate transit system, as related to interstate commerce under the Act.[7] Nor do we know whether the Georgia Courts would interpret the federal Act as not applicable to interest arbitration. Now that, under the impact of *Moses H. Cone*, MARTA has abandoned the existing decision on this point, at the least, this court should grant the writ and vacate the opinion for the Georgia court to decide the issues actually before it.[8]

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7 The Trial Court here found as fact that:

> Since MARTA began its operations, MARTA has bought goods and equipment from sources outside of Georgia. Among the funds used to purchase such goods and equipment were funds provided by grants from the U.S. Urban Mass Transportation Administration.
>
> Since MARTA began its operations, MARTA has operated bus routes to and from Atlanta/Hartsfield International Airport, the Greyhound and Trailways Intercity bus stations, and the Brookwood Station. MARTA does not segregate the federal operating assistance received from grants from the Urban Mass Transportation Administration from the other operating funds used to provide these services.

(Pet. App., p. A9) (paragraph numbers omitted).

8 MARTA's contention that the Georgia Courts would find its §13(c) Agreement to be too remote from commerce to qualify under the Act simply ignores this Court's own definitive decisions recognizing the generous interpretation to be accorded the federal Arbitration Act. *Inter alia*, *Prima Paint Corp.* v. *Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 401, n. 7 (1967). MARTA also simply ignores the countless decisions in the last twenty-five years routinely applying the federal Arbitration Act to contracts relating to employment, including collective bargaining agreements. *Inter alia*, *Milwaukee Typographical Union No. 23* v. *Newspapers, Inc.*, 639 F.2d 386 (7th Cir.), *cert. denied*, 454 U.S. 838 (1981) (collective bargaining agreement covered by FAA); *Bell Aerospace Co. Division of Textron, Inc.*, v. *Local 516, UAW*, 500 F.2d 921 (2d Cir. 1974) (collective bargaining agreement covered by FAA); *Electronics Corp. of America* v. *International Union of Electrical, Radio & Machine Workers Local 272*, 492 F.2d 1255 (1st Cir. 1974) (collective bargaining agreement); *Dickstein* v. *duPont*, 443 F.2d 783 (1st Cir. 1971) (contract of employment by brokerage firm); *Newark Stereotypers Union No. 18* v. *Newark Morning Ledger Co.*, 397 F.2d 594 (3d Cir.), *cert. denied*, 393 U.S. 954 (1968) (collective bargaining agreement); *Bache Halsey Stuart Shields, Inc.* v. *Moebius*, 531 F. Supp. 75 (E.D.Wis. 1982) (individual employment agreements).

CONCLUSION

MARTA's Brief in Opposition to the Petition for a Writ of Certiorari presents this Court with the most pressing reason to grant the writ. By abandoning the Georgia Court's decision, MARTA acknowledges that it is wrong; because there are countless §13(c) Agreements to arbitrate in place all over the country, the Georgia Court's misapplication of the federal Arbitration Act cannot be allowed to stand.

For these reasons, and as set forth in the Petition for Certiorari, the Writ should be granted.

Respectfully submitted,

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MARTA's last contention — that the FAA does not apply to interest arbitration — is equally ill-founded. MARTA cites only *Boston Printing Pressmen's Union* v. *Potter Press*, 141 F. Supp. 553 (D. Mass. 1956), 241 F.2d 787 (1st Cir.), *cert. denied*, 395 U.S. 817 (1957), which was overruled on other grounds in *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U.S. 448 (1957). Since then the federal courts have not refused to apply the FAA to interest arbitration agreements; thus, MARTA has no surviving authority for its contention at all. Moreover, in *Chattanooga Mailers Union, Local 92* v. *Chattanooga News-Free Press Co.*, 524 F.2d 1305, 1315 (6th Cir. 1975), the Court, in enforcing a commitment to interest arbitration, routinely referred to the FAA for governing procedures.